

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**

COMPUTER SCIENCES RAYTHEON

Employer

and

Case 12-RC-9191

LOCAL 2088, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL
WORKERS, AFL-CIO

Petitioner¹

**REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

The Employer, Computer Sciences Raytheon, provides technical launch support services in the Eastern Range to the 45th Space Wing of the United States Air Force pursuant to a contract with the United States Government. The Employer employs approximately 96 employees in a unit of technical and plant clerical employees who work at Patrick Air Force Base, Cape Canaveral Air Station, Kennedy Space Center, and other Florida mainland satellite locations, who are represented by the Petitioner, Local 2088, International Brotherhood of Electrical Workers, AFL-CIO. The Employer also employs three facility specialists who primarily work in a warehouse at Port Canaveral, Florida, and who are unrepresented.

The Petitioner filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act, seeking a self-determination election to allow all full-time and regular part-time facility specialists² to vote to determine whether they desire to be included in the existing unit of technical and plant clerical employees currently represented by the

¹ The Petitioner's name appears as amended at hearing.

² The description of the petitioned-for voting group appears as amended at the hearing.

Petitioner.³ The Employer and the Union stipulated that all other employees, office clerical employees, administrative employees, professional employees, all employees represented by other unions, all employees permanently assigned Down Range, watchmen, guards, managers, leaders, and other supervisors as defined in the Act should be excluded from the voting group or unit involved herein. A hearing officer of the Board held a hearing, and the Employer filed a timely brief with me.⁴

As evidenced at the hearing and in the Employer's brief, the parties disagree on one issue: whether or not a self-determination election should be conducted which would allow the facility specialists to be included in the unit of technical and plant clerical employees if they vote for representation by the Petitioner.

The Employer contends that a self-determination election should not be directed, arguing that facility specialists do not share a sufficient community of interest with the employees in the technical and plant clerical unit. At the hearing and in its brief, the Employer proposed no alternative appropriate unit for the facility specialists. The Petitioner, contrary to the Employer, contends that the facility specialists share a sufficient community of interest with the technical and plant clerical employees to warrant their inclusion in the unit of technical and plant clerical employees. Alternatively, the Petitioner agreed at the hearing that it would proceed to an election in a stand-alone unit of facility specialists if the Regional Director or the Board finds that a self-determination election is not appropriate.

I have considered the evidence and the arguments presented by the parties. As discussed below, I have concluded that the facility specialists may appropriately be included in the unit of technical and plant clerical employees and that a self-determination election may therefore be conducted. Accordingly, I have directed a self-determination election to determine

³ The proposed election is of the type commonly referred to as an *Armour-Globe* election, with the current case more closely resembling that described in *Armour & Co.*, 40 NLRB 1333 (1942), than in *The Globe Machine & Stamping Co.*, 3 NLRB 294 (1937).

⁴ The Petitioner did not file a brief.

whether all full-time and regular part-time facility specialists employed by the Employer at Port Canaveral, Florida wish to be included in the existing unit of technical and plant clerical employees or whether they wish to remain unrepresented.

To provide a context for my discussion of whether a self-determination election is appropriate, I will first present in detail the facts supporting my conclusion that a self-determination election is appropriate. Then, I will present the analysis supporting my conclusion.

I. Statement of Facts

A. Overview of Operations

Pursuant to its contract to provide launch support services to the 45th Space Wing of the United States Air Force, the Employer provides technical launch support services, such as performing analysis of tracking data, encrypting communications, predicting of launch trajectories, monitoring and maintaining instrumentation, storing classified information, coordinating equipment repairs, taking meteorological measurements, and making optical recordings, at various launch complexes. The Employer provides launch support services at various locations in the State of Florida, including Kennedy Space Center, Cape Canaveral Air Station, Patrick Air Force Base, and Jonathan Dickinson Missile Tracking Annex, and at various locations outside the United States, including locations at Antigua and Ascension Islands.

The Employer employs a total of approximately 1,100 persons, including the previously described unit of approximately 96 technical and plant clerical employees who work at Patrick Air Force Base, Cape Canaveral Air Station, Kennedy Space Center, and other Florida mainland satellite locations and the 3 facility specialists at issue here who primarily work in a warehouse at Port Canaveral, Florida. Approximately 370 of the Employer's employees are responsible for providing tracking station support and facility support on Antigua and Ascension Islands.

The Employer has seven collective-bargaining agreements with five different unions. The Petitioner represents the unit of technical and plant clerical employees, as well as a unit referred to as “mainland technicians;” International Alliance of Theatrical and Stage Employees (IATSE) represents a unit of employees who do optical readings; International Brotherhood of Teamsters, Local Union No. 769 (Teamsters, Local No. 769) represents a unit of material handlers who work at Patrick Air Force Base and Cape Canaveral Air Station;⁵ Transport Workers Union (TWU) represents a unit of employees who perform computer-based meteorological work; and Antigua Workers’ Union represents indigenous and local facilities support workers in Antigua. The employees on Ascension Islands are not represented.⁶

There has been some interchange between employees working in “mainland” positions and employees in “down range” positions in Antigua and Ascension Islands. Pursuant to the collective-bargaining agreements between the Employer and the Petitioner covering mainland technicians and technical and plant clerical employees, employees may be transferred from mainland positions to down range positions. In the past, employees have been transferred both permanently and temporarily from mainland positions to down range positions and from down range positions to mainland positions. In the past, employees have been temporarily transferred from mainland positions to down range positions with some frequency. When they have been transferred down range, they have filled in for down range employees or performed

⁵ At the hearing, the Employer’s attorney characterized the functions of the material handlers in the bargaining unit represented by Teamsters, Local No. 769 as similar to the functions performed by the facility specialists involved herein. However, neither the Employer nor anyone else has contended that the facility specialists belong in any existing bargaining unit other than the technical and plant clerical unit, and Teamsters, Local No. 769 has administratively advised this office that it does not have an interest in the petitioned-for employees.

⁶ There is no evidence that the Employer employs any other unrepresented employees who are eligible for representation under the Act other than the facility specialists. As found by the Board in *Computer Sciences Raytheon*, 318 NLRB 966 (1995), in which the Petitioner herein sought to represent certain employees of the Employer on the islands of Antigua and Ascension, the Board lacks jurisdiction over the Employer’s employees stationed in those locations, even though the employees work pursuant to the same government contract covering mainland employees.

special assignments, such as systems modifications. While they worked down range, they continued to be covered by their respective collective-bargaining agreements.⁷

B. Facility Specialists

The three facility specialists at Port Canaveral are primarily responsible for shipping and receiving of cargo to be used for the Employer's tracking operations in Antigua and Ascension Islands. The facility specialist positions were created in 2000 when the Employer obtained a modified contract with the United States Government which required the Employer to perform additional work, including the work currently performed by the facility specialists. Before 2000, the facility specialists' work was performed either by another contractor or by military personnel. While the facility specialists are not specifically excluded from the collective-bargaining agreement covering the technical and plant clerical employees, the three facility specialists have been unrepresented since their positions were created in 2000.

The facility specialists work for the Range Support Operations for Down Range and Port Operations department. Their immediate supervisor is transportation supervisor Steve Hechenberger. Hechenberger reports to manager of support services Jack Whitaker. Whitaker reports to the senior manager of the Down Range Support Operations department, Debbie Godbey. Godbey reports to the vice president of the Employer.

The facility specialists generally work in a warehouse at Port Canaveral, Florida, two miles away from the Range Operations Control Center at Patrick Air Force Base. At the warehouse, the facility specialists receive cargo from a procurement contractor, food and beverage vendors, and the United States Air Force. They then prepare the cargo for shipment to Antigua and Ascension Islands by packaging and consolidating the cargo, keeping track of supplies in the warehouse, building wood crates and pallets to hold the cargo, documenting and labeling the cargo, certifying any hazardous cargo, sorting the cargo, entering data into a

⁷ See 318 NLRB 966 at 966-967 (1995), which affirmed the Regional Director's Decision in Case 12-RC-7612, and the collective-bargaining agreements.

computerized cargo tracking system, and loading the cargo onto seavans for shipment. Items shipped include food, beverages, supplies for both instrumentation and facilities, including power plants, construction materials, and electronic items. On occasion, the facility specialists perform certain shipping and receiving functions in support of the Employer's operations at Patrick Air Force Base and other locations in the State of Florida. For instance, on occasion, the facility specialists drive to other locations, such as the Range Operations Control Center at Patrick Air Force Base or Tel-Four, a telemetry station in College Park, Florida, to pick up or deliver items from or to individuals employed by the Employer.⁸ In addition, they occasionally receive items from the production control coordinator, an employee included in the technical and plant clerical unit, for shipment to locations other than Antigua and Ascension Islands, such as items for shipment to either Newfoundland or Greenland.

There is no evidence that any facility specialist has ever been transferred, promoted, or demoted to or from the technical and plant clerical unit.⁹

The facility specialist position requires a high school diploma and hazardous certification for shipment by air and water or the ability to obtain certification after training. It also requires knowledge in packing and processing various types of cargo, ability to differentiate hazardous cargo from general cargo, computer literacy, ability to use a calculator and read tape measures, ability to lift cargo of at least 40 pounds, ability to stand for long periods of time, communication and customer service skills, and ability to obtain Department of Defense secret clearance.

Facility specialist positions also require experience using power tools, material handling

⁸ The record does not establish whether the facility specialists pick up and deliver those items to technical and plant clerical employees or other individuals employed by the Employer when they pick up and deliver items at the Range Operations Control Center and Tel-Four. However, a significant portion of the technical and plant clerical employees work at the Range Operations Control Center.

⁹ Prior to becoming a facility specialist, one of the current facility specialists worked in a mail room, initially operated by the Employer, then by contractor EnDyn, which won the contract to operate the mail room. Another of the current facility specialists transferred into her facility specialist position from a shipping and receiving position with the Employer in Antigua. The other current facility specialist had not been employed by the Employer prior to becoming a facility specialist. Before he became a facility specialist for the Employer, he was employed by Cube Corporation, a contractor at the Transportation Management Office at Patrick Air Force Base.

equipment, forklifts, and tools necessary to build crates and pallets, and experience with cargo software applications is preferred.

The facility specialists' pay is based upon their experience and their performance, which is evaluated in annual evaluations. One facility specialist earns \$15.86 per hour, one earns \$16.00 per hour, and one earns \$17.66 per hour.

C. Technical and Plant Clerical Employees

The employees in the unit of technical and plant clerical employees already represented by the Petitioner are primarily responsible for performing technical services associated with launch operations. The technical and plant clerical employees belong to the Range Operations Instrumentation Systems, Communication and Information Systems department. Senior manager of instrumentation systems Michael Litscher has supervisory responsibilities for these employees.

The technical and plant clerical employees work out of various locations in the State of Florida, including Patrick Air Force Base, Cape Canaveral Air Station, and Kennedy Space Center. A significant portion of the technical and plant clerical employees work at the Range Operations Control Center at Patrick Air Force Base, located two miles away from Port Canaveral. The technical and plant clerical employees are responsible for providing, among other services, coordination of range scheduling, coordination of the operation of various types of instrumentation, communication services, analysis of tracking data, encryption of communications, prediction of launch trajectories, monitoring and maintenance of instrumentation, creation of training materials for technicians and engineers, inspection of instrumentation and work stations, storage of classified information, and coordination of

equipment repairs.¹⁰ There is no evidence that any employee from the technical and plant clerical unit has ever been transferred, promoted, or demoted to or from a facility specialist position.

Among the classifications of employees included in the technical and plant clerical unit, pursuant to the Petitioner's collective-bargaining agreement with the Employer, are material control clerks and production control coordinators. Around 2000, the Employer promoted its only material control clerk to the production control coordinator position and had the new production control coordinator perform the material control clerk's job duties.¹¹ Since 2000, the material control clerk position has not been filled, and there has been only one production control coordinator.

The production control coordinator is responsible for coordinating the repair of equipment. In order to coordinate the repair of the equipment, the production control coordinator must ensure that the equipment is shipped to the correct location for repair, for instance to a vendor, and returned to the correct location after repair. The production control coordinator sometimes has equipment moved by the material handlers employed by the Employer in the Logistics Support Unit at Patrick Air Force Base and Cape Canaveral Air

¹⁰ The employees at Patrick Air Force Base, Cape Canaveral Air Station, Kennedy Space Center, and other Florida mainland satellite locations in the following job classifications are included in the technical and plant clerical unit: junior technical clerks, technical clerks, quality inspectors, drafters (A, B, and C), procurement and scheduling clerks, senior technical clerks, classified documents clerks, data presentation specialists, drawing maintenance specialists, equipment control clerks, quality analysts, video specialists, chief equipment control clerks, data processing requirement coordinators, material control clerks, range scheduling analysts, cryptographic specialists, technical resource analysts, communications requirement analysts, data processing requirement analysts, production control coordinators, procurement coordinators, senior range scheduling analysts, senior quality analysts, senior video analysts, network analysts, site maintenance engineers, systems controllers, training and documentation specialists, designers, senior systems controllers, senior data processing requirement analysts, system maintenance engineers, test operations analysts, and operations control engineers.

¹¹ According to the job description currently in effect for material control clerks, a material control clerk is responsible for providing support for shipping, receiving and storing of mechanical and electronic equipment by (1) receiving material and equipment, (2) preparing work orders for items that are to be repaired, (3) maintaining records on computer database files to monitor items while they are processing through the repair cycle, (4) delivering and receiving materials from vendors and Air Force Shipping and Receiving, (5) communicating with originators regarding the progress of repairs, and (6) performing other related duties.

Station or by the personnel in the Air Force Transportation Management Office. However, up to three times per week, the production control coordinator brings items to the warehouse at Port Canaveral for shipment by the facility specialists. The facility specialists have shipped items to Antigua, Ascension Islands, and either Greenland or Newfoundland for the production control coordinator. The facility specialists have also on occasion picked up items from the production control coordinator's office on Patrick Air Force Base for shipment. When the production control coordinator gives the facility specialists items for shipment, the items are typically already packaged, and the tracking number, weight, origin, and destination of the items are already documented on a shipping form. Sometimes, the facility specialists reweigh or crate the items. They then enter information from the shipping form into the Cargo Movement Operating System on the computer and have it shipped.

Most technical and plant clerical positions require an associates degree in electronics engineering technology or military background sufficient to perform electronics engineering technology functions. The material control clerk and production control coordinator positions, included in the technical and plant clerical unit, require a high school diploma or equivalent, ability to operate computers and databases, a valid driver's license, knowledge of property control systems procedures, knowledge of United States Air Force property accounting and auditing, written and oral communication skills, and related property and procurement experience. For material control clerks, ability to operate a forklift and a three-quarter ton truck is desirable.

Technical and plant clerical employees' pay is based upon their job classifications, and they each receive a set annual increase pursuant to the collective-bargaining agreement that covers them. Technical and plant clerical employees earn between \$13.69 per hour, for the lowest-paid classification, to \$33.85 per hour, for the highest-paid classification. The production control coordinator is paid \$24.91 per hour, and, pursuant to the collective-bargaining agreement, the wage rate for material control clerks is \$21.80 per hour.

II. Analysis

Before examining the specific facts underlying my analysis of whether facility specialists share a community of interest with technical and plant clerical employees, I will review the factors to be considered in determining whether a self-determination election is appropriate.

A union may petition to add unrepresented employees to an existing bargaining unit by petitioning for a self-determination election. In a self-determination election, if the majority of employees votes against representation, they remain unrepresented, but if the majority of employees votes for representation, they become part of the existing unit. Warner-Lambert Co., 298 NLRB 993 (1990).

A union may petition for a self-determination by seeking to represent a “residual” group of employees omitted from established bargaining units or by petitioning to represent a group of employees that does not belong to any existing bargaining unit but does not comprise a residual unit. When an incumbent union petitions to represent employees in a residual unit, the incumbent union can only represent the employees in the residual unit by adding them to the existing unit, usually by means of a self-determination election. *St. John’s Hospital*, 307 NLRB 767 (1992). When a union petitions for a self-determination election to be held among a group of employees not comprising a residual unit, a self-determination election will be directed if the employees to be added to the existing unit share a community of interest with the employees in the existing unit, and the employees to be added to the existing unit “constitute an identifiable, distinct segment so as to constitute an appropriate voting group.” *Warner-Lambert Co.*, 298 NLRB at 995.

In order for a unit to be a unit appropriate for purposes of collective bargaining within the meaning of the Act, the unit need not be the only appropriate unit or the most appropriate unit; it need only be *an* appropriate unit. *Barron Heating and Air Conditioning, Inc.*, 343 NLRB No. 58, slip op. at 3 (2004), citing *American Hosp. Ass’n v. NLRB*, 499 U.S. 606, 610 (1991); *Overnite Transportation Co.*, 322 NLRB 723 (1996); *P.J. Dick Contracting, Inc.*, 290 NLRB 150 (1988);

Morand Bros. Beverage, 91 NLRB 409, 418 (1950), enfd. 190 F.2d 576 (7th Cir. 1951). Thus, in determining whether a unit is appropriate, the Board first examines the petitioned-for unit. If the petitioned-for unit is *an* appropriate unit, the inquiry ends. *Id.* If it is not an appropriate unit, the Board then examines whether an alternative unit suggested by the parties or another unit not suggested by the parties is appropriate. *Overnite Transportation Co.*, 331 NLRB 664, 663 (2000).

In determining whether a unit is appropriate, the Board considers such factors as (1) functional integration, (2) common supervision, (3) the nature of skills and functions, (4) interchange and contact, (5) working conditions and fringe benefits, and (6) the Employer's history of collective bargaining. See, e.g., *Publix Supermarkets, Inc.*, 343 NLRB No. 109 (2004); *United Rentals, Inc.*, 341 NLRB 540 (2004); *United Operations, Inc.*, 338 NLRB 123 (2002); *Canal Carting, Inc.*, 339 NLRB 969 (2003).

There is no evidence that the facility specialists and the technical and plant clerical employees share common supervision or that there has been any interchange, such as transfers, promotions, or demotions, between the two groups.¹² However, I find that the work of the facility specialists and technical and plant clerical employees is functionally integrated, that the nature of the functions performed by the facility specialists overlaps with that of functions performed by technical and plant clerical employees, that the skills possessed by the facility specialists overlap with those possessed by technical and plant clerical employees, that the facility specialists and certain technical and plant clerical employees have contact with one another, that certain working conditions are shared by facility specialists and some technical and plant clerical employees, that facility specialists and technical and plant clerical employees work in nearby work locations, and that the Employer's history of collective bargaining weighs in favor of a finding that a unit of the facility specialists and the technical and plant clerical

¹² I note that the record also does not establish that employees in the technical and plant clerical unit are commonly supervised at the lower levels or that there is interchange among the different classifications of employees in that unit.

employees is appropriate. Therefore, I have concluded that the facility specialists may appropriately be included in the unit of technical and plant clerical employees and that a self-determination election is therefore appropriate. Further, to the extent that the facility specialists constitute a residual unit, I find that a self-determination election is appropriate on that basis as well, since the Petitioner already represents the technical and plant clerical unit.

The work of the facility specialists is functionally integrated with that of the technical and plant clerical employees. Both facility specialists and technical and plant clerical employees provide launch support services in the Eastern Range pursuant to the Employer's contract with the United States Government. Further, the job functions of the facility specialists are integrated with the functions of the production control coordinator. During the course of shipping equipment to vendors or Antigua, Ascension Islands, and either Greenland or Newfoundland, in order to coordinate repair, the production control coordinator delivers cargo to the facility specialists up to three times per week for shipment. The facility specialists also pick up items from the production control coordinator in order to ship them as part of the production control coordinator's coordinating the repair of equipment. The production control coordinator coordinates the repair of equipment in support of the work performed by technical and plant clerical employees. Therefore, the facility specialists' participation in the shipment of the equipment has a direct impact on the work of technical and plant clerical employees. Further, on occasion, the facility specialists pick up or deliver items from or to the Range Control Operations Center, where a significant portion of the technical and plant clerical employees work.

The fact that the work of the facility specialists is primarily integrated with the work of the production control coordinator as opposed to the other technical and plant clerical employees does not negate my finding of functional integration. See *Publix Super Markets, Inc.*, 343 NLRB No. 109, slip op. at 2-3 (2004) (finding functional integration of the work of employees in a fluid processing department and employees in a distribution department, "fresh pack" produce

department, ice packaging department, dispatch department, and fleet operations department when there were some employees within the unit who performed support functions throughout all departments, including the fluid processing department).

The skills possessed by the facility specialists overlap with the skills possessed by certain technical and plant clerical employees. Although many of the technical and plant clerical positions require an associates degree in electronics engineering technology or military background sufficient to perform electronics engineering technology functions, the production control coordinator and material control clerk positions, like the facility specialist positions, require a high school diploma or equivalent, computer literacy, and experience with processing property or cargo.

The nature of the functions performed by the facility specialists also overlaps with the nature of some of the functions performed by certain technical and plant clerical employees. In coordinating repairs, the production control coordinator performs some coordination work that is not performed by the facility specialists. However, both the facility specialists and the production control coordinator perform packaging and shipping work, though facility specialists apparently perform such work on a larger scale, which requires them to sometimes build crates and pallets and operate material handling equipment such as forklifts.

The Employer asserts that since the work performed by many of the technical and plant clerical employees is highly technical work or is work performed in support of highly technical work, the nature of the work performed by the technical and plant clerical employees is too dissimilar from that performed by the facility specialists for the two groups of employees to share a community of interest. However, the facility specialists perform work in support of technical work as well (although primarily down range). Thus, they are not distinguishable from the material control clerks and other clericals in the existing technical and plant clerical unit on this basis. Further, the facility specialists perform work that at least in part is plant clerical in nature. They keep track of supplies in the warehouse and enter data regarding cargo into a

computerized cargo tracking system. See *Columbia Textile Services*, 293 NLRB 1034 (1989); *Hamilton Halter Co.*, 270 NLRB 331 (1984).

The facility specialists and the production control coordinator have regular contact with one another during the course of performing their job duties. The production control coordinator delivers items to the facility specialists at the warehouse at the port up to three times per week, and the facility specialists occasionally pick up items from the production control coordinator at her office at Patrick Air Force Base. Further, the facility specialists occasionally pick up or deliver items from or to the Range Operations Control Center at Patrick Air Force Base, where a significant number of technical and plant clerical employees work.

Certain working conditions are shared by the facility specialists and technical and plant clerical employees. Facility specialists primarily work in a warehouse without air conditioning, while technical and plant clerical employees primarily work in an office setting. However, both facility specialists and technical and plant clerical employees work at least in some settings that require security clearance. In addition, the facility specialists' pay is within the range of pay earned by technical and plant clerical employees, even though facility specialists' pay is merit based and technical and plant clerical employees' pay is set in the collective-bargaining agreement.¹³

The facility specialists and the technical and plant clerical employees also work at nearby work locations. The technical and plant clerical employees work at a number of locations, including Patrick Air Force Base, Cape Canaveral Air Station, Kennedy Space Center, and other Florida mainland satellite locations. A significant portion of the technical and plant clerical employees work at the Range Operations Control Center at Patrick Air Force Base. Some of the technical and plant clerical employees move from one location to another in order to perform maintenance work on instrumentation. The facility specialists primarily work at a

¹³ There is no evidence in the record regarding whether or not facility specialists and technical and plant clerical employees receive similar benefits such as health insurance or retirement benefits.

warehouse in Port Canaveral, which is two miles from the Range Operations Control Center. However, they occasionally travel to the Range Operations Control Center or other locations at Patrick Air Force Base and at other sites where the Employer provides launch support services. In sum, the technical and plant clerical employees are dispersed over several locations, the warehouse at Port Canaveral is only two miles from the work site of a significant portion of technical and plant clerical employees, and the facility specialists occasionally visit the work sites of the technical and plant clerical employees.

Finally, I find that the Employer's history of collective bargaining weighs in favor of a finding that the facility specialists and the technical and plant clerical employees constitute an appropriate unit. The facility specialist positions were created in 2000, and they were not specifically excluded from the collective-bargaining agreement covering the technical and plant clerical employees. Upon creation of the facility specialist positions they became a small fringe group of unrepresented employees working among various units of employees who are represented. I therefore find that, considering the above community of interest factors, the Employer's history of collective bargaining, and the lack of interest of any other labor organization in representing them, the facility specialists should be permitted to choose whether or not to become part of the unit of technical and plant clerical employees.

Considering all of the relevant factors, I have concluded that the facility specialists and technical and plant clerical employees constitute an appropriate unit for purposes of collective bargaining. Further, I find that the facility specialists constitute an identifiable, distinct segment so as to constitute an appropriate voting group, as they are the only facility specialists employed by the Employer, and are the only employees of the Employer who work primarily at Port Canaveral, Florida.¹⁴ Further, I find that a self-determination election is appropriate to the extent that the facility specialists constitute a residual unit since the Petitioner already represents the

¹⁴ As noted earlier, no evidence was presented that the Employer employs any other unrepresented employees who are eligible for representation under the Act.

unit of technical and plant clerical employees. I therefore direct a self-determination election to determine whether all full-time and regular part-time facility specialists employed by the Employer at Port Canaveral, Florida desire to be included in the existing unit of technical and plant clerical employees or whether they wish to remain unrepresented.

III. Conclusions and Findings

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

A. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

B. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.¹⁵

C. The Petitioner claims to represent certain employees of the Employer.

D. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

E. The following employees of the Employer constitute an appropriate voting group sharing a community of interest for the purpose of collective bargaining with the existing bargaining unit:

All full-time and regular part-time facility specialists employed by the Employer at Port Canaveral, Florida EXCLUDING all other employees, office clerical employees, administrative employees, professional employees, all employees represented by other unions, all employees permanently assigned Down Range, watchmen, guards, managers, leaders, and other supervisors as defined in the Act.

¹⁵ The Employer is a joint venture partnership with an office and place of business located at Patrick Air Force Base, Florida where it is engaged in providing technical services to the 45th Space Wing of the United States Air Force in the Eastern Range pursuant to a contract with the United States Government. During the past 12 months, the Employer in the course and conduct of its business operations, as described above, purchased and received at its Florida facilities, goods, supplies and materials valued in excess of \$50,000 directly from points located outside the State of Florida.

If a majority of valid ballots are cast for the Petitioner, they will be taken to have indicated the employees' desire to be included in the existing technical and plant clerical unit currently represented by the Petitioner. If a majority of valid ballots are not cast for representation, they will be taken to have indicated the employees' desire to remain unrepresented.

IV. Direction of Election

The National Labor Relations Board will conduct a secret ballot election among the employees in the voting group found appropriate above. The employees will vote on the question of whether or not they wish to be included in the existing technical and plant clerical unit currently represented for purposes of collective bargaining by Local 2088, International Brotherhood of Electrical Workers, AFL-CIO. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the voting group who are employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that began less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers, but who have been permanently replaced, as well as their replacements, are eligible to vote. Voting group employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the

election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc. 156 N.L.R.B. 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all eligible voters. North Macon Health Care Facility, 315 N.L.R.B. 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized. Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 201 East Kennedy Blvd., Suite 530, Tampa, FL 33602, on or before **May 30, 2006**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. Since the list will be made available to all parties to the election, please furnish a total of **two** copies.¹⁶ If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of three full working days prior to the date of the election. Failure to follow the posting

¹⁶ The list may be submitted by facsimile transmission to (813) 228-2874, or electronically to Region12@nrlb.gov, as well as by hard copy. Only one copy should be submitted if the list is sent electronically or by facsimile.

requirement may result in additional litigation if proper objections to the election are filed.

Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the Election Notice. Club Demonstration Services, 317 N.L.R.B. 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W. Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST on **June 5, 2006**. The request may not be filed by facsimile.¹⁷

Dated at Tampa, Florida, this 22nd day of May, 2006.

/s[Rochelle Kentov]
Rochelle Kentov, Regional Director
National Labor Relations Board, Region 12
201 E. Kennedy Blvd., Suite 530
Tampa, FL 33602

¹⁷ In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board's office in Washington, D.C. If a party wishes to file the above-described document electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: www.nlrb.gov.